

### **REMARKS**

At the outset, applicants request that the finality of the previous action be withdrawn, for the reasons following.

As stated in MPEP §706.07(a), a "second or any subsequent action shall be final, except where the examiner introduces a new ground of rejection neither necessitated by applicants' amendment of the claims nor based on information filed during the period set forth in 37 CFR §1.97(c)".

In the present case, claim 1 stands rejected as anticipated by Rehr DE 40 21 321, which is newly cited and was not submitted in applicants' information disclosure statement filed with the last amendment. The examiner states that applicants' amendment necessitated the new grounds of rejection, but claim 1 was only amended to incorporate the limitations of claims 2 and 3, together with language more clearly defining the relationship of the claimed elements. However the basic language of claims 2 and 3 taken alone would have been sufficient to define over the sole reference cited by the examiner, FR 2 730 714. As pointed out in the last amendment, FR '714 does not disclose an extension projecting out of the cylinder, with an actuating cable connected to the extension, as recited in claim 3. The additional language - that the extension projects oppositely from the piston rod - is inherent and was added solely to render the claim more definite.

From the foregoing it should be apparent that the new grounds of rejection were not necessitated by applicants' amendment, but by the failure of the cited reference to anticipate claim 3. Accordingly, withdrawal of the finality of the action is requested so that the present amendment may be entered.

The specification has been amended for accuracy and consistency, as well as to provide antecedent basis for added claim language. More particularly, as stated at page 3, the object

of the invention is to realize a gas spring. As stated at page 8, lines 6-7, "The cylinder is filled with a gaseous pressure medium, with the result that a pushing out force acts on the piston rod". This force is subsequently referred to (page 8, lines 18 and 20) as an actuating force. For accuracy and consistency, both terms have been changed to "restoring force", which is well accepted for the force provided by the piston in a gas spring. This also eliminates any confusion with the force provided by the actuator, which acts counter to the restoring force.

Independent claims 1 and 17 have each been amended to define the elements of the adjustable gas spring which is the subject of the present invention. More particularly, the claims have been amended to recite the gaseous pressure medium, the exertion of a restoring force by the gaseous medium, and the driving of the force transmitting element by the actuator to move the piston rod counter to the restoring force.

Claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by Rehr DE 40 21 321. To the extent that this reference would be applied against claim 1 as presently amended, such rejection is traversed for the reasons following.

DE '321 discloses a hydraulic damper 5 having a piston 6 which moves in a liquid filled cylinder to damp vibrations induced in Bowden cable 4 by spring 11. The cylinder is not filled with a gaseous pressure medium, and thus no restoring force is exerted on the piston 6 by a gaseous pressure medium. The hydraulic fluid or liquid does not provide any restoring force, but is simply throttled by orifice 8 in the piston to assure that the piston cannot undergo vibrations, thereby assuring that the Bowden cable 4 does not transmit any vibrations to the throttle 16 of the engine. It should therefore be clear that DE '321 neither anticipates claim 1 nor renders it obvious, because DE '321 discloses structure and function which are materially different from the structure and function of the piston-cylinder recited in claim 1.

Claim 4 stands rejected under 35 U.S.C. §103 as being unpatentable over DE '321, in view of Flury WO 00/71456. The latter reference discloses a pair of oil-filled chambers separated by a piston which is moved by a reversible oil pump. This adds nothing to detract from the patentability of claim 1.

Claims 5-7 stand rejected under 35 U.S.C. §103 as being unpatentable over Rehr DE '321 in view of Gitzinger EP 0 595 357. The latter discloses a gas spring comprising a piston-cylinder unit having a piston having a valve 15 which is opened by the action of a Bowden cable to connect the opposing working cylinders so that the position of the piston in the cylinder can be adjusted. There is no disclosure of an actuator which acts counter to a restoring force exerted by the gaseous medium.

Claims 17-18 and 20 stand rejected as anticipated by Hanajima JP 59-151606, which was submitted with the recently filed IDS. This rejection is traversed for the reasons following.

JP '606 discloses a piston-cylinder unit wherein the piston is moved by a pressure medium applied at connectors 10 and 11 in order to move a rod 23 in opposite directions a and b. The element 23 is not an actuator and does not drive a force transmitting element to move the piston rod in the cylinder. Thus, even without the clarifying amendment, claim 17 is not anticipated by JP '606.

Claim 19 stands rejected under 35 U.S.C. §103 as being unpatentable over JP '606 in view of Koepsell DE 295 08 612. The latter discloses a gas spring having a piston with a valve which is opened by air pressure. Here too there is no disclosure of an actuator which acts counter to a restoring force exerted by the gaseous medium.


The allowance of claims 21-26 is noted with appreciation. In view of the foregoing amendment of claim 1, and the patentability of claim 17 with or without amendment, it is requested that the rejections be withdrawn.

For the foregoing reasons it is requested that the finality of the previous action be withdrawn, the present amendment entered, and the application be allowed. If any objections remain, a call to the undersigned is requested.

It is believed that no fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,

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